

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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|--|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| SEARS HOLDINGS CORPORATION, <i>et al.</i> , ¹ |) | |
| |) | Case No. 18-23538 (RRD) |
| Debtors. |) | |
| |) | (Jointly Administered) |

**DECLARATION OF KEVIN RAMIREZ IN SUPPORT OF THE OBJECTION OF
SALESFORCE.COM, INC. TO THE PROPOSED ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS AND CURE COSTS, AND RESERVATION OF RIGHTS**

I, Kevin Ramirez, declare as follows:

1. I am the AR Analyst-Write-offs for Salesforce.com, Inc. ("**Salesforce**") and I am authorized to execute this Declaration on behalf of Salesforce. If called to testify, I could and would competently testify to the facts set forth herein based on my personal

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

knowledge of those facts, events and transactions.²

2. Salesforce is a Delaware corporation and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the “**Salesforce Services**”) to Salesforce’s business customers. (individually, a “**Salesforce Customer**” and, collectively, “**Salesforce Customers**”). This declaration is filed in support of the *Objection of Salesforce.Com, Inc. to the Proposed Assumption of Certain Executory Contracts and Cure Costs, And Reservation of Rights* (the “**Assumption Objection**”) filed by Salesforce with respect to the possible assumption by the Debtors of those certain executory contract to which the Creditors are a counterparty (as hereinafter identified).

MAINTENANCE OF BUSINESS RECORDS

3. In my official capacity, I have personal knowledge of the method by which Salesforce maintains permanent records of its transactions (individually, a “**Transaction**” and, collectively, the “**Transactions**”) with its customers and, thereupon, I declare and state that Salesforce maintains permanent records of all Transactions in a computerized accounting system. All amounts due and owing to Salesforce with respect to any Transaction with a Salesforce Customer including, but not limited to, payments related to the Services, taxes, interest owed with respect to any Service or agreement, fees, and other charges (individually, an “**Obligation**” and, collectively, the “**Obligations**”), are entered in this accounting system at, or near, the time such Obligations are incurred. Likewise, all payments made by a Salesforce Customer with respect to any Obligation or Transaction, and all other credits and debits related to any Obligation or Transaction, are entered in this accounting system at, or near, the time such payment is received and/or such credit or debit

² Capitalized terms used in this Declaration, but which are not defined herein, shall have the meanings ascribed to them in the Cure Objection filed concurrently herewith.

is made or incurred. Each such entry is made in the regular course of business by employees of Salesforce who process these payments, receipts, credits, and debits. If necessary, Salesforce can print hard copies of all entries.

4. I have personal knowledge of the manner by which Salesforce maintains records of its written contracts, statements of work, schedules and any other documents related to such contracts, and all amendments to any contract, statement of work, schedule, and/or any other document (individually, a “**Salesforce Agreement**” and, collectively, the “**Salesforce Agreements**”) with its Customers. As a regular part of its business, Salesforce maintains permanent records of the Salesforce Agreements and these records are compiled at the time, or near the time, that a Salesforce Agreement is received or processed.

SALESFORCE CONTRACT

5. I have personally reviewed Salesforce’s records relating to the Debtors, including the Transactions, the Obligations and the Salesforce Agreements, and I am personally familiar with Salesforce’s Account with certain of the above-named Debtors.

6. The Debtors (as hereinafter identified) entered into those certain Order Forms (the “**SFDC Orders**”)³ whereby (a) each of the named Debtors ordered Services from Salesforce and became obligated to pay the aggregate full contract amount for the Services, and Salesforce became obligated to provide the Services to the Debtors.

7. The terms and conditions applicable to the Services that are subject to the Salesforce Orders are set forth in the *Master Subscription Agreements*⁴ by and between Debtors and Salesforce, (the “**MSAs**”, the MSAs together with the SFDC Orders constitute the “**Salesforce Contract**”). A copy of the Salesforce Contract is not attached hereto due

³ The SFDC Orders are listed on the “SFDC Cure Amount Summary” which is attached hereto as Exhibit A, and incorporated by reference herein as if fully set forth.

⁴ The MSAs are listed on the “SFDC Cure Amount Summary” which is attached hereto as Exhibit A, and incorporated by reference herein as if fully set forth.

to the confidentiality provisions contained within the Salesforce Contract. However, a copy may be made available to the Debtors and the Committee in the event any response is filed to this Cure Objection.

BANKRUPTCY CASE

8. Based upon information and belief, I am informed that, on October 15, 2018 (the "**Petition Date**"), each of the above-captioned Debtors (collectively, the "**Debtors**") filed their individual, voluntary petitions in the above-captioned Court (the "**Court**") seeking relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

9. Based on information and belief, I am informed that, on November 1, 2018, the Debtors filed their motion seeking, among other things, procedures for the sale of certain assets and the assumption of certain executory contracts and unexpired leases (the "**Global Bidding Procedures Motion**").⁵

10. Based on information and belief, I am informed that, on November 19, 2018, the Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* (the "**Global Bidding Procedures Order**") (ECF No. 816), approving global bidding and sale procedures (the "**Global Bidding Procedures**"), in connection with the sale or disposition of substantially all of the Debtors' assets (the "**Assets**").

11. Based on information and belief, I am informed that, on January 14, 2019, the Debtors commenced an auction for the sale of the Global Assets (the "**Auction**"). At the conclusion of the Auction, the Debtors (as directed by the Restructuring Committee) determined that the offer submitted by Transform Holdco, LLC (the "**Successful Bidder**" or "**Buyer**") (which was established by ESL Investments, Inc. to acquire substantially all of

⁵ See Notice of Hearing on Debtor's Motion for Approval of Global Bidding Procedures and the Debtors' Motion for Approval of Global Bidding Procedures [ECF 429].

the Global Assets) was the highest or best offer for the Global Assets (the “**Successful Bid**”).⁶ The Debtors executed an asset purchase agreement with the Buyer for purchase of the Acquired Assets (as defined in the Asset Purchase Agreement dated January 17, 2019) (the “**Asset Purchase Agreement**,” and the transaction effected thereby, the “**Global Asset Sale Transaction**”).

12. Based upon information and belief, I am informed that, on January 18, 2019, the Debtors filed their notice (the “**Cure Notice**”)⁷ that identifies the executory contracts and unexpired leases that it may assume and assign pursuant to the pending Global Asset Sale Transaction, and the monetary defaults (the “**Cure Amounts**”) with respect to such contracts and leases that it contends must be cured as a condition of assuming a specific contract or lease. Among other executory contracts and unexpired leases, the Cure Notice identifies the following executory contract and related Cure Amount:

| Debtor | Counterparty | Contract Type | Execute Date | Terminate Date | Contract No. | Cure Amount |
|---------------------------------------|----------------------|--------------------------------------|--------------|----------------|--------------|-------------|
| Sears Holdings Management Corporation | Salesforce.com, Inc. | Invoice No. 12525781 | N/A | NA | N/A | \$ 460,880 |
| Sears Holdings Management Corporation | Salesforce.com | Master Subscription Agreement - 2010 | N/A | NA | SHC-68113 | \$ 0.00 |

CURE AMOUNT

13. Based upon my review of Salesforce’s books and records pertinent to the Debtors’ account, I declare and state that (a) the Debtors (including, without limitation, Sears Holding Management Corp.) have failed to pay all Fees due and owing pursuant to the Salesforce Contract, and (b) more specifically, as of this date, not less than US\$ **580,351.27** (the “**Salesforce Cure Amount**”) is due and owing to Salesforce pursuant to the Salesforce

⁶ See Notice of Successful Bidder and Sale Hearing [ECF 1730].

⁷ See Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [ECF 1731].

Contract. A summary of the Salesforce Cure Amount (the “SFDC Cure Amount Summary”) is attached hereto as Exhibit A and incorporated by reference herein as if fully set forth. Copies of the Invoices are not attached hereto due to the confidentiality provisions contained within the Salesforce Contract. However, copies may be made available to the Debtors upon request.

14. Additionally, US\$ 471,927.24, will become due and owing for additional services to be provided through the end of the term of the contract.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 23 day of January 2019 at San Francisco, California


Kevin Ramirez